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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In re )  
Allocation of Spectrum Below )  
5 GHz Transferred From ) ET Docket No. 94-32  
Federal Government Use )

To: The Commission

**COMMENTS OF WIRELESS HOLDINGS, INC.**

Wireless Holdings, Inc. ("WHI"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Proposed Rule Making ("Notice"), FCC 94-272, released November 8, 1994 in the above-captioned proceeding.

**Introduction**

WHI and affiliated companies operate wireless cable systems in the San Francisco/San Jose, Spokane and Tampa markets, serving approximately 20,000 subscribers. Numerous other markets are under development. WHI plans to incorporate interactive services in its wireless cable systems, utilizing unique technology developed by one of its shareholders, Le Groupe Vidéotron Ltée ("Videotron").

As set forth below, WHI supports the proposed transfer of the government spectrum to public use, and urges the Commission to do so as expeditiously as possible. However, WHI strongly opposes the suggestion that the present frequency allocation for Multipoint Distribution Service (MDS) Channels 1, 2 and 2A be changed to a

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different portion of the spectrum. When weighing the many comments and proposals regarding use of the new spectrum, WHI urges the Commission to address its most immediate public interest priorities in allocating these initial spectrum segments.

**I. THE COMMISSION SHOULD NOT DISRUPT THE PRESENT FREQUENCY ALLOCATION FOR MDS.**

WHI believes there is great potential for new and improved service to the public through the use of the transferred spectrum, and that the public interest is best served by bringing this spectrum into public use as quickly as possible.

One of the many alternatives offered for comment in the Notice is a reallocation of the spectrum now allocated to MDS Channels 1, 2 and 2A in order to accommodate unlicensed personal communications services (PCS). Notice at ¶ 14. WHI strongly opposes this alternative, which the Commission apparently offers on its own motion and not on the basis of any comment submitted earlier in this proceeding.

Wireless cable systems such as those operated by WHI provide a source of competition in multichannel video services in their markets. Competition has long been a public interest priority of the Commission. One of the competitive limitations facing wireless operators is the finite number of channels (in the MDS and Instructional Television Fixed Service) available for use. WHI depends greatly on its use (and planned use) of MDS stations operating on MDS Channels 1 and 2 in providing its services. Stations on MDS Channels 1 and 2 serve many existing subscribers,

and, in the future, have the potential of serving more as wireless cable takes a greater competitive hold in the marketplace.

Wireless operators, most of which are still developing their businesses and have limited revenues, have made huge investments in MDS Channel 1 and 2 transmission facilities and the associated receiver units placed at subscriber locations. Were the Commission to reallocate the operating frequencies of MDS Channels 1 and 2, this existing service to the public provided by these channels would be disrupted, as a massive amount of equipment changes would be necessitated. Equipment and personnel expense would be incurred in changing out both transmission equipment and the many subscriber receiver units. Not only would such a wide-sweeping change-out tap the already-limited resources of the nascent wireless industry, but it could retard the successful marketing and growth of the systems.

This wholesale disruption of the wireless industry is unnecessary to accommodate any of the new or expanded services, including unlicensed PCS, envisaged by the Commission for the transferred spectrum. With respect to unlicensed PCS, the Commission notes several other alternatives, none of which involve the disruption of a primary service like MDS which presently provides substantial service to the public.<sup>1</sup> WHI urges the Commission to retain the present frequency allocation for MDS

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<sup>1</sup>Another alternative for accommodating unlicensed PCS would be to make use of some of the remaining part of the 220 MHz of spectrum previously transferred and partly allocated to licensed PCS. Within the spectrum designated by the Commission for "future use," unlicensed PCS could be accommodated. See Notice at n.22 and accompanying text.

Channels 1, 2 and 2A, and to adopt other proposals for use of the transferred spectrum.

**II. THE COMMISSION SHOULD BE MINDFUL OF ITS IMMEDIATE PUBLIC INTEREST PRIORITIES IN ALLOCATING THE TRANSFERRED SPECTRUM.**

Given the cacophony of voices suggesting uses for the transferred spectrum, WHI urges the Commission to be mindful of its immediate public interest priorities, including the furtherance of competition in the multichannel video marketplace. As the Commission shows in the Notice at Appendix A, this transfer of spectrum is the first of many such transfers to be mandated by law in the coming years. Some of the uses previously suggested by commenters involve services or technologies which are still substantially under technical development and are not presently available for use. The later transfers of spectrum can accommodate many of these uses without delaying their availability to the public.

WHI supports the Commission's proposal of a flexible allocation scheme which relies on market forces to determine particular uses of the frequency segments. However, to the extent that the Commission fashions its rules to accommodate particular types of service, it should place a priority on those services which are presently developed and which serve its most pressing public interest goals.

WHI, for example, may seek licenses for some of this spectrum for the provision of its advanced interactive services on a wireless basis. This technology, which already has been developed

by Videotron, is a unique product offering which enhances WHI's ability to provide competition in the multichannel video services market -- a top Commission priority.

WHI urges the Commission not to limit the use of the frequency bands by adopting overly-restrictive channelization plans. WHI believes the spectrum should be licensed by geographic area<sup>2</sup> in order to provide the greatest usefulness and flexibility.

### **Conclusion**

As set forth above, Wireless Holdings, Inc. supports the Commission's proposal to allocate the newly-transferred spectrum on a flexible-use basis, but strongly urges the Commission not to reallocate the spectrum used by MDS. In allocating this first group of many spectrum segments to be transferred, the Commission

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<sup>2</sup>WHI believes that the spectrum should be licensed on an area-by-area basis using the Metropolitan Statistical Area/Rural Service Area definitions adopted by the Commission for licensing other services.

should be mindful of its immediate public interest priorities,  
including the furtherance of competition in the multichannel video  
marketplace.

Respectfully submitted,

**WIRELESS HOLDINGS, INC.**

By: 

Robert J. Rini

Rini & Coran, P.C.  
Dupont Circle Building  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

Its Attorneys

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